

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5288

Chapter 375, Laws of 2009

(partial veto)

61st Legislature
2009 Regular Session

SUPERVISION OF OFFENDERS

EFFECTIVE DATE: 07/26/09

Passed by the Senate April 25, 2009
YEAS 26 NAYS 23

BRAD OWEN

President of the Senate

Passed by the House April 21, 2009
YEAS 51 NAYS 45

FRANK CHOPP

Speaker of the House of Representatives

Approved May 6, 2009, 2:21 p.m., with
the exception of Section 18 which is
vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **ENGROSSED
SUBSTITUTE SENATE BILL 5288** as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 8, 2009

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5288

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Human Services & Corrections (originally sponsored by
Senators Hargrove, Stevens, Regala, and Shin)

READ FIRST TIME 01/26/09.

1 AN ACT Relating to the supervision of offenders; amending RCW
2 9.94A.501, 9.94A.501, 9.94A.030, 9.94A.701, 9.94A.704, 9.94A.707,
3 9.94A.850, 9.95.220, 9.94A.633, 9.94A.737, and 9.94A.6332; amending
4 2008 c 231 s 6 (uncodified); reenacting and amending RCW 9.94A.030;
5 creating new sections; repealing RCW 9.95.206 and 9.95.212; repealing
6 2008 c 231 s 60 (uncodified); providing an effective date; providing an
7 expiration date; and declaring an emergency.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 **Sec. 1.** RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read
10 as follows:

11 ~~(1) ((When the department performs a risk assessment pursuant to~~
12 ~~RCW 9.94A.500, or to determine a person's conditions of supervision,~~
13 ~~the risk assessment shall classify the offender or a probationer~~
14 ~~sentenced in superior court into one of at least four risk categories.~~

15 ~~(2) The department shall supervise every offender sentenced to a~~
16 ~~term of community custody, community placement, or community~~
17 ~~supervision and every misdemeanor and gross misdemeanor probationer~~
18 ~~ordered by a superior court to probation under the supervision of the~~
19 ~~department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210.~~

1 ~~(a) Whose risk assessment places that offender or probationer in~~
2 ~~one of the two highest risk categories; or~~
3 ~~(b) Regardless of the offender's or probationer's risk category if:~~
4 ~~(i) The offender's or probationer's current conviction is for:~~
5 ~~(A) A sex offense;~~
6 ~~(B) A violent offense;~~
7 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~
8 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~
9 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~
10 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~
11 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~
12 ~~intent to deliver methamphetamine; or~~
13 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~
14 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~
15 ~~(ii) The offender or probationer has a prior conviction for:~~
16 ~~(A) A sex offense;~~
17 ~~(B) A violent offense;~~
18 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~
19 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~
20 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~
21 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~
22 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~
23 ~~intent to deliver methamphetamine; or~~
24 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~
25 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~
26 ~~(iii) The conditions of the offender's community custody, community~~
27 ~~placement, or community supervision or the probationer's supervision~~
28 ~~include chemical dependency treatment;~~
29 ~~(iv) The offender))~~ The department shall supervise every offender
30 convicted of a misdemeanor or gross misdemeanor offense who is
31 sentenced to probation in superior court, pursuant to RCW 9.92.060,
32 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this
33 subsection. The superior court shall order probation for:
34 (a) Offenders convicted of fourth degree assault, violation of a
35 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,
36 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,
37 and who also have a prior conviction for one or more of the following:
38 (i) A violent offense;

1 (ii) A sex offense;
2 (iii) A crime against a person as provided in RCW 9.94A.411;
3 (iv) Fourth degree assault; or
4 (v) Violation of a domestic violence court order; and
5 (b) Offenders convicted of:
6 (i) Sexual misconduct with a minor second degree;
7 (ii) Custodial sexual misconduct second degree;
8 (iii) Communication with a minor for immoral purposes; and
9 (iv) Failure to register pursuant to RCW 9A.44.130.
10 (2) Misdemeanor and gross misdemeanor offenders supervised by the
11 department pursuant to this section shall be placed on community
12 custody.
13 (3) The department shall supervise every felony offender sentenced
14 to community custody whose risk assessment, conducted pursuant to
15 subsection (6) of this section, places the offender in one of the two
16 highest risk categories.
17 (4) Notwithstanding any other provision of this section, the
18 department shall supervise an offender sentenced to community custody
19 regardless of risk classification if the offender:
20 (a) Has a current conviction for a sex offense;
21 (b) Has been identified by the department as a dangerous mentally
22 ill offender pursuant to RCW 72.09.370;
23 (c) Has an indeterminate sentence and is subject to parole pursuant
24 to RCW 9.95.017;
25 (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or
26 ~~((v) The offender)~~ (e) Is subject to supervision pursuant to RCW
27 9.94A.745.
28 ~~((3))~~ (5) The department is not authorized to, and may not,
29 supervise any offender sentenced to a term of community custody,
30 community placement, or community supervision or any probationer unless
31 the offender or probationer is one for whom supervision is required
32 under subsection (1), (2), (3), or (4) of this section.
33 ~~((4) This section expires July 1, 2010)~~ (6) The department shall
34 conduct a risk assessment for every felony offender sentenced to a term
35 of community custody, community placement, or community supervision who
36 may be subject to supervision under this section.

1 **Sec. 2.** RCW 9.94A.501 and 2008 c 231 s 24 are each amended to read
2 as follows:

3 ~~(1) ((When the department performs a risk assessment pursuant to
4 RCW 9.94A.500, or to determine a person's conditions of supervision,
5 the risk assessment shall classify the offender or a probationer
6 sentenced in superior court into one of at least four risk categories.~~

7 ~~(2) The department shall supervise every offender sentenced to a
8 term of community custody and every misdemeanor and gross misdemeanor
9 probationer ordered by a superior court to probation under the
10 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
11 9.95.210:~~

12 ~~(a) Whose risk assessment places that offender or probationer in
13 one of the two highest risk categories; or~~

14 ~~(b) Regardless of the offender's or probationer's risk category if:~~

15 ~~(i) The offender's or probationer's current conviction is for:~~

16 ~~(A) A sex offense;~~

17 ~~(B) A violent offense;~~

18 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~

19 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

20 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

21 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to
22 violate, RCW 69.50.401 by manufacture or delivery or possession with
23 intent to deliver methamphetamine; or~~

24 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to
25 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

26 ~~(ii) The offender or probationer has a prior conviction for:~~

27 ~~(A) A sex offense;~~

28 ~~(B) A violent offense;~~

29 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~

30 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

31 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

32 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to
33 violate, RCW 69.50.401 by manufacture or delivery or possession with
34 intent to deliver methamphetamine; or~~

35 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to
36 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

37 ~~(iii) The conditions of the offender's community custody or the
38 probationer's supervision include chemical dependency treatment;~~

1 ~~(iv) The offender~~) The department shall supervise every offender
2 convicted of a misdemeanor or gross misdemeanor offense who is
3 sentenced to probation in superior court, pursuant to RCW 9.92.060,
4 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this
5 subsection. The superior court shall order probation for:

6 (a) Offenders convicted of fourth degree assault, violation of a
7 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,
8 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,
9 and who also have a prior conviction for one or more of the following:

10 (i) A violent offense;

11 (ii) A sex offense;

12 (iii) A crime against a person as provided in RCW 9.94A.411;

13 (iv) Fourth degree assault; or

14 (v) Violation of a domestic violence court order; and

15 (b) Offenders convicted of:

16 (i) Sexual misconduct with a minor second degree;

17 (ii) Custodial sexual misconduct second degree;

18 (iii) Communication with a minor for immoral purposes; and

19 (iv) Failure to register pursuant to RCW 9A.44.130.

20 (2) Misdemeanor and gross misdemeanor offenders supervised by the
21 department pursuant to this section shall be placed on community
22 custody.

23 (3) The department shall supervise every felony offender sentenced
24 to community custody whose risk assessment, conducted pursuant to
25 subsection (6) of this section, classifies the offender as one who is
26 at a high risk to reoffend.

27 (4) Notwithstanding any other provision of this section, the
28 department shall supervise an offender sentenced to community custody
29 regardless of risk classification if the offender:

30 (a) Has a current conviction for a sex offense;

31 (b) Has been identified by the department as a dangerous mentally
32 ill offender pursuant to RCW 72.09.370;

33 (c) Has an indeterminate sentence and is subject to parole pursuant
34 to RCW 9.95.017;

35 (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or

36 ~~((v) The offender)~~ (e) Is subject to supervision pursuant to RCW
37 9.94A.745.

1 ~~((3))~~ (5) The department is not authorized to, and may not,
2 supervise any offender sentenced to a term of community custody or any
3 probationer unless the offender or probationer is one for whom
4 supervision is required under subsection (1), (2), (3), or (4) of this
5 section.

6 ~~((4) This section expires July 1, 2010))~~ (6) The department shall
7 conduct a risk assessment for every felony offender sentenced to a term
8 of community custody who may be subject to supervision under this
9 section.

10 **Sec. 3.** RCW 9.94A.030 and 2008 c 276 s 309 and 2008 c 7 s 1 are
11 each reenacted and amended to read as follows:

12 Unless the context clearly requires otherwise, the definitions in
13 this section apply throughout this chapter.

14 (1) "Board" means the indeterminate sentence review board created
15 under chapter 9.95 RCW.

16 (2) "Collect," or any derivative thereof, "collect and remit," or
17 "collect and deliver," when used with reference to the department,
18 means that the department, either directly or through a collection
19 agreement authorized by RCW 9.94A.760, is responsible for monitoring
20 and enforcing the offender's sentence with regard to the legal
21 financial obligation, receiving payment thereof from the offender, and,
22 consistent with current law, delivering daily the entire payment to the
23 superior court clerk without depositing it in a departmental account.

24 (3) "Commission" means the sentencing guidelines commission.

25 (4) "Community corrections officer" means an employee of the
26 department who is responsible for carrying out specific duties in
27 supervision of sentenced offenders and monitoring of sentence
28 conditions.

29 (5) "Community custody" means that portion of an offender's
30 sentence of confinement in lieu of earned release time or imposed
31 ~~((pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,~~
32 ~~9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545,))~~ as part of a
33 sentence under this chapter and served in the community subject to
34 controls placed on the offender's movement and activities by the
35 department. For offenders placed on community custody for crimes
36 committed on or after July 1, 2000, the department shall assess the

1 offender's risk of reoffense and may establish and modify conditions of
2 community custody, in addition to those imposed by the court, based
3 upon the risk to community safety.

4 (6) "Community custody range" means the minimum and maximum period
5 of community custody included as part of a sentence under RCW
6 9.94A.715, as established by the commission or the legislature under
7 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

8 (7) "Community placement" means that period during which the
9 offender is subject to the conditions of community custody and/or
10 postrelease supervision, which begins either upon completion of the
11 term of confinement (postrelease supervision) or at such time as the
12 offender is transferred to community custody in lieu of earned release.
13 Community placement may consist of entirely community custody, entirely
14 postrelease supervision, or a combination of the two.

15 (8) "Community protection zone" means the area within eight hundred
16 eighty feet of the facilities and grounds of a public or private
17 school.

18 (9) "Community restitution" means compulsory service, without
19 compensation, performed for the benefit of the community by the
20 offender.

21 (10) "Community supervision" means a period of time during which a
22 convicted offender is subject to crime-related prohibitions and other
23 sentence conditions imposed by a court pursuant to this chapter or RCW
24 16.52.200(6) or 46.61.524. Where the court finds that any offender has
25 a chemical dependency that has contributed to his or her offense, the
26 conditions of supervision may, subject to available resources, include
27 treatment. For purposes of the interstate compact for out-of-state
28 supervision of parolees and probationers, RCW 9.95.270, community
29 supervision is the functional equivalent of probation and should be
30 considered the same as probation by other states.

31 (11) "Confinement" means total or partial confinement.

32 (12) "Conviction" means an adjudication of guilt pursuant to
33 Title((§)) 10 or 13 RCW and includes a verdict of guilty, a finding of
34 guilty, and acceptance of a plea of guilty.

35 (13) "Crime-related prohibition" means an order of a court
36 prohibiting conduct that directly relates to the circumstances of the
37 crime for which the offender has been convicted, and shall not be
38 construed to mean orders directing an offender affirmatively to

1 participate in rehabilitative programs or to otherwise perform
2 affirmative conduct. However, affirmative acts necessary to monitor
3 compliance with the order of a court may be required by the department.

4 (14) "Criminal history" means the list of a defendant's prior
5 convictions and juvenile adjudications, whether in this state, in
6 federal court, or elsewhere.

7 (a) The history shall include, where known, for each conviction (i)
8 whether the defendant has been placed on probation and the length and
9 terms thereof; and (ii) whether the defendant has been incarcerated and
10 the length of incarceration.

11 (b) A conviction may be removed from a defendant's criminal history
12 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
13 a similar out-of-state statute, or if the conviction has been vacated
14 pursuant to a governor's pardon.

15 (c) The determination of a defendant's criminal history is distinct
16 from the determination of an offender score. A prior conviction that
17 was not included in an offender score calculated pursuant to a former
18 version of the sentencing reform act remains part of the defendant's
19 criminal history.

20 (15) "Criminal street gang" means any ongoing organization,
21 association, or group of three or more persons, whether formal or
22 informal, having a common name or common identifying sign or symbol,
23 having as one of its primary activities the commission of criminal
24 acts, and whose members or associates individually or collectively
25 engage in or have engaged in a pattern of criminal street gang
26 activity. This definition does not apply to employees engaged in
27 concerted activities for their mutual aid and protection, or to the
28 activities of labor and bona fide nonprofit organizations or their
29 members or agents.

30 (16) "Criminal street gang associate or member" means any person
31 who actively participates in any criminal street gang and who
32 intentionally promotes, furthers, or assists in any criminal act by the
33 criminal street gang.

34 (17) "Criminal street gang-related offense" means any felony or
35 misdemeanor offense, whether in this state or elsewhere, that is
36 committed for the benefit of, at the direction of, or in association
37 with any criminal street gang, or is committed with the intent to

1 promote, further, or assist in any criminal conduct by the gang, or is
2 committed for one or more of the following reasons:

3 (a) To gain admission, prestige, or promotion within the gang;

4 (b) To increase or maintain the gang's size, membership, prestige,
5 dominance, or control in any geographical area;

6 (c) To exact revenge or retribution for the gang or any member of
7 the gang;

8 (d) To obstruct justice, or intimidate or eliminate any witness
9 against the gang or any member of the gang;

10 (e) To directly or indirectly cause any benefit, aggrandizement,
11 gain, profit, or other advantage for the gang, its reputation,
12 influence, or membership; or

13 (f) To provide the gang with any advantage in, or any control or
14 dominance over any criminal market sector, including, but not limited
15 to, manufacturing, delivering, or selling any controlled substance
16 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
17 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
18 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
19 (chapter 9.68 RCW).

20 (18) "Day fine" means a fine imposed by the sentencing court that
21 equals the difference between the offender's net daily income and the
22 reasonable obligations that the offender has for the support of the
23 offender and any dependents.

24 (19) "Day reporting" means a program of enhanced supervision
25 designed to monitor the offender's daily activities and compliance with
26 sentence conditions, and in which the offender is required to report
27 daily to a specific location designated by the department or the
28 sentencing court.

29 (20) "Department" means the department of corrections.

30 (21) "Determinate sentence" means a sentence that states with
31 exactitude the number of actual years, months, or days of total
32 confinement, of partial confinement, of community supervision, the
33 number of actual hours or days of community restitution work, or
34 dollars or terms of a legal financial obligation. The fact that an
35 offender through earned release can reduce the actual period of
36 confinement shall not affect the classification of the sentence as a
37 determinate sentence.

1 (22) "Disposable earnings" means that part of the earnings of an
2 offender remaining after the deduction from those earnings of any
3 amount required by law to be withheld. For the purposes of this
4 definition, "earnings" means compensation paid or payable for personal
5 services, whether denominated as wages, salary, commission, bonuses, or
6 otherwise, and, notwithstanding any other provision of law making the
7 payments exempt from garnishment, attachment, or other process to
8 satisfy a court-ordered legal financial obligation, specifically
9 includes periodic payments pursuant to pension or retirement programs,
10 or insurance policies of any type, but does not include payments made
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
12 or Title 74 RCW.

13 (23) "Drug offender sentencing alternative" is a sentencing option
14 available to persons convicted of a felony offense other than a violent
15 offense or a sex offense and who are eligible for the option under RCW
16 9.94A.660.

17 (24) "Drug offense" means:

18 (a) Any felony violation of chapter 69.50 RCW except possession of
19 a controlled substance (RCW 69.50.4013) or forged prescription for a
20 controlled substance (RCW 69.50.403);

21 (b) Any offense defined as a felony under federal law that relates
22 to the possession, manufacture, distribution, or transportation of a
23 controlled substance; or

24 (c) Any out-of-state conviction for an offense that under the laws
25 of this state would be a felony classified as a drug offense under (a)
26 of this subsection.

27 (25) "Earned release" means earned release from confinement as
28 provided in RCW 9.94A.728.

29 (26) "Escape" means:

30 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
31 first degree (RCW 9A.76.110), escape in the second degree (RCW
32 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
33 willful failure to return from work release (RCW 72.65.070), or willful
34 failure to be available for supervision by the department while in
35 community custody (RCW 72.09.310); or

36 (b) Any federal or out-of-state conviction for an offense that
37 under the laws of this state would be a felony classified as an escape
38 under (a) of this subsection.

1 (27) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
3 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
4 run injury-accident (RCW 46.52.020(4)), felony driving while under the
5 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
6 felony physical control of a vehicle while under the influence of
7 intoxicating liquor or any drug (RCW 46.61.504(6)); or

8 (b) Any federal or out-of-state conviction for an offense that
9 under the laws of this state would be a felony classified as a felony
10 traffic offense under (a) of this subsection.

11 (28) "Fine" means a specific sum of money ordered by the sentencing
12 court to be paid by the offender to the court over a specific period of
13 time.

14 (29) "First-time offender" means any person who has no prior
15 convictions for a felony and is eligible for the first-time offender
16 waiver under RCW 9.94A.650.

17 (30) "Home detention" means a program of partial confinement
18 available to offenders wherein the offender is confined in a private
19 residence subject to electronic surveillance.

20 (31) "Legal financial obligation" means a sum of money that is
21 ordered by a superior court of the state of Washington for legal
22 financial obligations which may include restitution to the victim,
23 statutorily imposed crime victims' compensation fees as assessed
24 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
25 court-appointed attorneys' fees, and costs of defense, fines, and any
26 other financial obligation that is assessed to the offender as a result
27 of a felony conviction. Upon conviction for vehicular assault while
28 under the influence of intoxicating liquor or any drug, RCW
29 46.61.522(1)(b), or vehicular homicide while under the influence of
30 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
31 obligations may also include payment to a public agency of the expense
32 of an emergency response to the incident resulting in the conviction,
33 subject to RCW 38.52.430.

34 (32) "Most serious offense" means any of the following felonies or
35 a felony attempt to commit any of the following felonies:

36 (a) Any felony defined under any law as a class A felony or
37 criminal solicitation of or criminal conspiracy to commit a class A
38 felony;

- 1 (b) Assault in the second degree;
- 2 (c) Assault of a child in the second degree;
- 3 (d) Child molestation in the second degree;
- 4 (e) Controlled substance homicide;
- 5 (f) Extortion in the first degree;
- 6 (g) Incest when committed against a child under age fourteen;
- 7 (h) Indecent liberties;
- 8 (i) Kidnapping in the second degree;
- 9 (j) Leading organized crime;
- 10 (k) Manslaughter in the first degree;
- 11 (l) Manslaughter in the second degree;
- 12 (m) Promoting prostitution in the first degree;
- 13 (n) Rape in the third degree;
- 14 (o) Robbery in the second degree;
- 15 (p) Sexual exploitation;
- 16 (q) Vehicular assault, when caused by the operation or driving of
- 17 a vehicle by a person while under the influence of intoxicating liquor
- 18 or any drug or by the operation or driving of a vehicle in a reckless
- 19 manner;
- 20 (r) Vehicular homicide, when proximately caused by the driving of
- 21 any vehicle by any person while under the influence of intoxicating
- 22 liquor or any drug as defined by RCW 46.61.502, or by the operation of
- 23 any vehicle in a reckless manner;
- 24 (s) Any other class B felony offense with a finding of sexual
- 25 motivation;
- 26 (t) Any other felony with a deadly weapon verdict under RCW
- 27 9.94A.602;
- 28 (u) Any felony offense in effect at any time prior to December 2,
- 29 1993, that is comparable to a most serious offense under this
- 30 subsection, or any federal or out-of-state conviction for an offense
- 31 that under the laws of this state would be a felony classified as a
- 32 most serious offense under this subsection;
- 33 (v)(i) A prior conviction for indecent liberties under RCW
- 34 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
- 35 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
- 36 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
- 37 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

1 (ii) A prior conviction for indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
3 if: (A) The crime was committed against a child under the age of
4 fourteen; or (B) the relationship between the victim and perpetrator is
5 included in the definition of indecent liberties under RCW
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
7 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
8 through July 27, 1997;

9 (w) Any out-of-state conviction for a felony offense with a finding
10 of sexual motivation if the minimum sentence imposed was ten years or
11 more; provided that the out-of-state felony offense must be comparable
12 to a felony offense under Title 9 or 9A RCW and the out-of-state
13 definition of sexual motivation must be comparable to the definition of
14 sexual motivation contained in this section.

15 (33) "Nonviolent offense" means an offense which is not a violent
16 offense.

17 (34) "Offender" means a person who has committed a felony
18 established by state law and is eighteen years of age or older or is
19 less than eighteen years of age but whose case is under superior court
20 jurisdiction under RCW 13.04.030 or has been transferred by the
21 appropriate juvenile court to a criminal court pursuant to RCW
22 13.40.110. Throughout this chapter, the terms "offender" and
23 "defendant" are used interchangeably.

24 (35) "Partial confinement" means confinement for no more than one
25 year in a facility or institution operated or utilized under contract
26 by the state or any other unit of government, or, if home detention or
27 work crew has been ordered by the court, in an approved residence, for
28 a substantial portion of each day with the balance of the day spent in
29 the community. Partial confinement includes work release, home
30 detention, work crew, and a combination of work crew and home
31 detention.

32 (36) "Pattern of criminal street gang activity" means:

33 (a) The commission, attempt, conspiracy, or solicitation of, or any
34 prior juvenile adjudication of or adult conviction of, two or more of
35 the following criminal street gang-related offenses:

36 (i) Any "serious violent" felony offense as defined in (~~RCW~~
37 ~~9.94A.030~~) this section, excluding Homicide by Abuse (RCW 9A.32.055)
38 and Assault of a Child 1 (RCW 9A.36.120);

1 (ii) Any "violent" offense as defined by ((RCW 9.94A.030)) this
2 section, excluding Assault of a Child 2 (RCW 9A.36.130);
3 (iii) Deliver or Possession with Intent to Deliver a Controlled
4 Substance (chapter 69.50 RCW);
5 (iv) Any violation of the firearms and dangerous weapon act
6 (chapter 9.41 RCW);
7 (v) Theft of a Firearm (RCW 9A.56.300);
8 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
9 (vii) Malicious Harassment (RCW 9A.36.080);
10 (viii) Harassment where a subsequent violation or deadly threat is
11 made (RCW 9A.46.020(2)(b));
12 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
13 (x) Any felony conviction by a person eighteen years of age or
14 older with a special finding of involving a juvenile in a felony
15 offense under RCW 9.94A.833;
16 (xi) Residential Burglary (RCW 9A.52.025);
17 (xii) Burglary 2 (RCW 9A.52.030);
18 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
19 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
20 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
21 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
22 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
23 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
24 9A.56.075);
25 (xix) Extortion 1 (RCW 9A.56.120);
26 (xx) Extortion 2 (RCW 9A.56.130);
27 (xxi) Intimidating a Witness (RCW 9A.72.110);
28 (xxii) Tampering with a Witness (RCW 9A.72.120);
29 (xxiii) Reckless Endangerment (RCW 9A.36.050);
30 (xxiv) Coercion (RCW 9A.36.070);
31 (xxv) Harassment (RCW 9A.46.020); or
32 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
33 (b) That at least one of the offenses listed in (a) of this
34 subsection shall have occurred after July 1, 2008;
35 (c) That the most recent committed offense listed in (a) of this
36 subsection occurred within three years of a prior offense listed in (a)
37 of this subsection; and

1 (d) Of the offenses that were committed in (a) of this subsection,
2 the offenses occurred on separate occasions or were committed by two or
3 more persons.

4 (37) "Persistent offender" is an offender who:

5 (a)(i) Has been convicted in this state of any felony considered a
6 most serious offense; and

7 (ii) Has, before the commission of the offense under (a) of this
8 subsection, been convicted as an offender on at least two separate
9 occasions, whether in this state or elsewhere, of felonies that under
10 the laws of this state would be considered most serious offenses and
11 would be included in the offender score under RCW 9.94A.525; provided
12 that of the two or more previous convictions, at least one conviction
13 must have occurred before the commission of any of the other most
14 serious offenses for which the offender was previously convicted; or

15 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
16 of a child in the first degree, child molestation in the first degree,
17 rape in the second degree, rape of a child in the second degree, or
18 indecent liberties by forcible compulsion; (B) any of the following
19 offenses with a finding of sexual motivation: Murder in the first
20 degree, murder in the second degree, homicide by abuse, kidnapping in
21 the first degree, kidnapping in the second degree, assault in the first
22 degree, assault in the second degree, assault of a child in the first
23 degree, assault of a child in the second degree, or burglary in the
24 first degree; or (C) an attempt to commit any crime listed in this
25 subsection (37)(b)(i); and

26 (ii) Has, before the commission of the offense under (b)(i) of this
27 subsection, been convicted as an offender on at least one occasion,
28 whether in this state or elsewhere, of an offense listed in (b)(i) of
29 this subsection or any federal or out-of-state offense or offense under
30 prior Washington law that is comparable to the offenses listed in
31 (b)(i) of this subsection. A conviction for rape of a child in the
32 first degree constitutes a conviction under (b)(i) of this subsection
33 only when the offender was sixteen years of age or older when the
34 offender committed the offense. A conviction for rape of a child in
35 the second degree constitutes a conviction under (b)(i) of this
36 subsection only when the offender was eighteen years of age or older
37 when the offender committed the offense.

1 (38) "Postrelease supervision" is that portion of an offender's
2 community placement that is not community custody.

3 (39) "Predatory" means: (a) The perpetrator of the crime was a
4 stranger to the victim, as defined in this section; (b) the perpetrator
5 established or promoted a relationship with the victim prior to the
6 offense and the victimization of the victim was a significant reason
7 the perpetrator established or promoted the relationship; or (c) the
8 perpetrator was: (i) A teacher, counselor, volunteer, or other person
9 in authority in any public or private school and the victim was a
10 student of the school under his or her authority or supervision. For
11 purposes of this subsection, "school" does not include home-based
12 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,
13 volunteer, or other person in authority in any recreational activity
14 and the victim was a participant in the activity under his or her
15 authority or supervision; or (iii) a pastor, elder, volunteer, or other
16 person in authority in any church or religious organization, and the
17 victim was a member or participant of the organization under his or her
18 authority.

19 (40) "Private school" means a school regulated under chapter
20 28A.195 or 28A.205 RCW.

21 (41) "Public school" has the same meaning as in RCW 28A.150.010.

22 (42) "Restitution" means a specific sum of money ordered by the
23 sentencing court to be paid by the offender to the court over a
24 specified period of time as payment of damages. The sum may include
25 both public and private costs.

26 (43) "Risk assessment" means the application of ~~((an objective))~~
27 the risk instrument ~~((supported by research and adopted by))~~
28 recommended to the department ~~((for the purpose of assessing an~~
29 ~~offender's risk of reoffense, taking into consideration the nature of~~
30 ~~the harm done by the offender, place and circumstances of the offender~~
31 ~~related to risk, the offender's relationship to any victim, and any~~
32 ~~information provided to the department by victims. The results of a~~
33 ~~risk assessment shall not be based on unconfirmed or unconfirmable~~
34 ~~allegations))~~ by the Washington state institute for public policy as
35 having the highest degree of predictive accuracy for assessing an
36 offender's risk of reoffense.

37 (44) "Serious traffic offense" means:

1 (a) Nonfelony driving while under the influence of intoxicating
2 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
3 while under the influence of intoxicating liquor or any drug (RCW
4 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
5 attended vehicle (RCW 46.52.020(5)); or

6 (b) Any federal, out-of-state, county, or municipal conviction for
7 an offense that under the laws of this state would be classified as a
8 serious traffic offense under (a) of this subsection.

9 (45) "Serious violent offense" is a subcategory of violent offense
10 and means:

11 (a)(i) Murder in the first degree;

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

18 (viii) Assault of a child in the first degree; or

19 (ix) An attempt, criminal solicitation, or criminal conspiracy to
20 commit one of these felonies; or

21 (b) Any federal or out-of-state conviction for an offense that
22 under the laws of this state would be a felony classified as a serious
23 violent offense under (a) of this subsection.

24 (46) "Sex offense" means:

25 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
26 RCW 9A.44.130(12);

27 (ii) A violation of RCW 9A.64.020;

28 (iii) A felony that is a violation of chapter 9.68A RCW other than
29 RCW 9.68A.080; or

30 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
31 criminal solicitation, or criminal conspiracy to commit such crimes;

32 (b) Any conviction for a felony offense in effect at any time prior
33 to July 1, 1976, that is comparable to a felony classified as a sex
34 offense in (a) of this subsection;

35 (c) A felony with a finding of sexual motivation under RCW
36 9.94A.835 or 13.40.135; or

37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex
2 offense under (a) of this subsection.

3 (47) "Sexual motivation" means that one of the purposes for which
4 the defendant committed the crime was for the purpose of his or her
5 sexual gratification.

6 (48) "Standard sentence range" means the sentencing court's
7 discretionary range in imposing a nonappealable sentence.

8 (49) "Statutory maximum sentence" means the maximum length of time
9 for which an offender may be confined as punishment for a crime as
10 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
11 crime, or other statute defining the maximum penalty for a crime.

12 (50) "Stranger" means that the victim did not know the offender
13 twenty-four hours before the offense.

14 (51) "Total confinement" means confinement inside the physical
15 boundaries of a facility or institution operated or utilized under
16 contract by the state or any other unit of government for twenty-four
17 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

18 (52) "Transition training" means written and verbal instructions
19 and assistance provided by the department to the offender during the
20 two weeks prior to the offender's successful completion of the work
21 ethic camp program. The transition training shall include instructions
22 in the offender's requirements and obligations during the offender's
23 period of community custody.

24 (53) "Victim" means any person who has sustained emotional,
25 psychological, physical, or financial injury to person or property as
26 a direct result of the crime charged.

27 (54) "Violent offense" means:

28 (a) Any of the following felonies:

29 (i) Any felony defined under any law as a class A felony or an
30 attempt to commit a class A felony;

31 (ii) Criminal solicitation of or criminal conspiracy to commit a
32 class A felony;

33 (iii) Manslaughter in the first degree;

34 (iv) Manslaughter in the second degree;

35 (v) Indecent liberties if committed by forcible compulsion;

36 (vi) Kidnapping in the second degree;

37 (vii) Arson in the second degree;

38 (viii) Assault in the second degree;

1 (ix) Assault of a child in the second degree;
2 (x) Extortion in the first degree;
3 (xi) Robbery in the second degree;
4 (xii) Drive-by shooting;
5 (xiii) Vehicular assault, when caused by the operation or driving
6 of a vehicle by a person while under the influence of intoxicating
7 liquor or any drug or by the operation or driving of a vehicle in a
8 reckless manner; and

9 (xiv) Vehicular homicide, when proximately caused by the driving of
10 any vehicle by any person while under the influence of intoxicating
11 liquor or any drug as defined by RCW 46.61.502, or by the operation of
12 any vehicle in a reckless manner;

13 (b) Any conviction for a felony offense in effect at any time prior
14 to July 1, 1976, that is comparable to a felony classified as a violent
15 offense in (a) of this subsection; and

16 (c) Any federal or out-of-state conviction for an offense that
17 under the laws of this state would be a felony classified as a violent
18 offense under (a) or (b) of this subsection.

19 (55) "Work crew" means a program of partial confinement consisting
20 of civic improvement tasks for the benefit of the community that
21 complies with RCW 9.94A.725.

22 (56) "Work ethic camp" means an alternative incarceration program
23 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
24 the cost of corrections by requiring offenders to complete a
25 comprehensive array of real-world job and vocational experiences,
26 character-building work ethics training, life management skills
27 development, substance abuse rehabilitation, counseling, literacy
28 training, and basic adult education.

29 (57) "Work release" means a program of partial confinement
30 available to offenders who are employed or engaged as a student in a
31 regular course of study at school.

32 **Sec. 4.** RCW 9.94A.030 and 2009 c 28 s 4 are each amended to read
33 as follows:

34 Unless the context clearly requires otherwise, the definitions in
35 this section apply throughout this chapter.

36 (1) "Board" means the indeterminate sentence review board created
37 under chapter 9.95 RCW.

1 (2) "Collect," or any derivative thereof, "collect and remit," or
2 "collect and deliver," when used with reference to the department,
3 means that the department, either directly or through a collection
4 agreement authorized by RCW 9.94A.760, is responsible for monitoring
5 and enforcing the offender's sentence with regard to the legal
6 financial obligation, receiving payment thereof from the offender, and,
7 consistent with current law, delivering daily the entire payment to the
8 superior court clerk without depositing it in a departmental account.

9 (3) "Commission" means the sentencing guidelines commission.

10 (4) "Community corrections officer" means an employee of the
11 department who is responsible for carrying out specific duties in
12 supervision of sentenced offenders and monitoring of sentence
13 conditions.

14 (5) "Community custody" means that portion of an offender's
15 sentence of confinement in lieu of earned release time or imposed as
16 part of a sentence under this chapter and served in the community
17 subject to controls placed on the offender's movement and activities by
18 the department.

19 ~~((("Community custody range" means the minimum and maximum
20 period of community custody included as part of a sentence under RCW
21 9.94A.701, as established by the commission or the legislature under
22 RCW 9.94A.850.~~

23 ~~(7))~~ "Community protection zone" means the area within eight
24 hundred eighty feet of the facilities and grounds of a public or
25 private school.

26 ~~((8))~~ (7) "Community restitution" means compulsory service,
27 without compensation, performed for the benefit of the community by the
28 offender.

29 ~~((9))~~ (8) "Confinement" means total or partial confinement.

30 ~~((10))~~ (9) "Conviction" means an adjudication of guilt pursuant
31 to Title 10 or 13 RCW and includes a verdict of guilty, a finding of
32 guilty, and acceptance of a plea of guilty.

33 ~~((11))~~ (10) "Crime-related prohibition" means an order of a court
34 prohibiting conduct that directly relates to the circumstances of the
35 crime for which the offender has been convicted, and shall not be
36 construed to mean orders directing an offender affirmatively to
37 participate in rehabilitative programs or to otherwise perform

1 affirmative conduct. However, affirmative acts necessary to monitor
2 compliance with the order of a court may be required by the department.

3 ~~((+12+))~~ (11) "Criminal history" means the list of a defendant's
4 prior convictions and juvenile adjudications, whether in this state, in
5 federal court, or elsewhere.

6 (a) The history shall include, where known, for each conviction (i)
7 whether the defendant has been placed on probation and the length and
8 terms thereof; and (ii) whether the defendant has been incarcerated and
9 the length of incarceration.

10 (b) A conviction may be removed from a defendant's criminal history
11 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
12 a similar out-of-state statute, or if the conviction has been vacated
13 pursuant to a governor's pardon.

14 (c) The determination of a defendant's criminal history is distinct
15 from the determination of an offender score. A prior conviction that
16 was not included in an offender score calculated pursuant to a former
17 version of the sentencing reform act remains part of the defendant's
18 criminal history.

19 ~~((+13+))~~ (12) "Criminal street gang" means any ongoing
20 organization, association, or group of three or more persons, whether
21 formal or informal, having a common name or common identifying sign or
22 symbol, having as one of its primary activities the commission of
23 criminal acts, and whose members or associates individually or
24 collectively engage in or have engaged in a pattern of criminal street
25 gang activity. This definition does not apply to employees engaged in
26 concerted activities for their mutual aid and protection, or to the
27 activities of labor and bona fide nonprofit organizations or their
28 members or agents.

29 ~~((+14+))~~ (13) "Criminal street gang associate or member" means any
30 person who actively participates in any criminal street gang and who
31 intentionally promotes, furthers, or assists in any criminal act by the
32 criminal street gang.

33 ~~((+15+))~~ (14) "Criminal street gang-related offense" means any
34 felony or misdemeanor offense, whether in this state or elsewhere, that
35 is committed for the benefit of, at the direction of, or in association
36 with any criminal street gang, or is committed with the intent to
37 promote, further, or assist in any criminal conduct by the gang, or is
38 committed for one or more of the following reasons:

- 1 (a) To gain admission, prestige, or promotion within the gang;
2 (b) To increase or maintain the gang's size, membership, prestige,
3 dominance, or control in any geographical area;
4 (c) To exact revenge or retribution for the gang or any member of
5 the gang;
6 (d) To obstruct justice, or intimidate or eliminate any witness
7 against the gang or any member of the gang;
8 (e) To directly or indirectly cause any benefit, aggrandizement,
9 gain, profit, or other advantage for the gang, its reputation,
10 influence, or membership; or
11 (f) To provide the gang with any advantage in, or any control or
12 dominance over any criminal market sector, including, but not limited
13 to, manufacturing, delivering, or selling any controlled substance
14 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
15 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
16 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
17 (chapter 9.68 RCW).

18 ~~((+16+))~~ (15) "Day fine" means a fine imposed by the sentencing
19 court that equals the difference between the offender's net daily
20 income and the reasonable obligations that the offender has for the
21 support of the offender and any dependents.

22 ~~((+17+))~~ (16) "Day reporting" means a program of enhanced
23 supervision designed to monitor the offender's daily activities and
24 compliance with sentence conditions, and in which the offender is
25 required to report daily to a specific location designated by the
26 department or the sentencing court.

27 ~~((+18+))~~ (17) "Department" means the department of corrections.

28 ~~((+19+))~~ (18) "Determinate sentence" means a sentence that states
29 with exactitude the number of actual years, months, or days of total
30 confinement, of partial confinement, of community custody, the number
31 of actual hours or days of community restitution work, or dollars or
32 terms of a legal financial obligation. The fact that an offender
33 through earned release can reduce the actual period of confinement
34 shall not affect the classification of the sentence as a determinate
35 sentence.

36 ~~((+20+))~~ (19) "Disposable earnings" means that part of the earnings
37 of an offender remaining after the deduction from those earnings of any
38 amount required by law to be withheld. For the purposes of this

1 definition, "earnings" means compensation paid or payable for personal
2 services, whether denominated as wages, salary, commission, bonuses, or
3 otherwise, and, notwithstanding any other provision of law making the
4 payments exempt from garnishment, attachment, or other process to
5 satisfy a court-ordered legal financial obligation, specifically
6 includes periodic payments pursuant to pension or retirement programs,
7 or insurance policies of any type, but does not include payments made
8 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
9 or Title 74 RCW.

10 ~~((+21+))~~ (20) "Drug offender sentencing alternative" is a
11 sentencing option available to persons convicted of a felony offense
12 other than a violent offense or a sex offense and who are eligible for
13 the option under RCW 9.94A.660.

14 ~~((+22+))~~ (21) "Drug offense" means:

15 (a) Any felony violation of chapter 69.50 RCW except possession of
16 a controlled substance (RCW 69.50.4013) or forged prescription for a
17 controlled substance (RCW 69.50.403);

18 (b) Any offense defined as a felony under federal law that relates
19 to the possession, manufacture, distribution, or transportation of a
20 controlled substance; or

21 (c) Any out-of-state conviction for an offense that under the laws
22 of this state would be a felony classified as a drug offense under (a)
23 of this subsection.

24 ~~((+23+))~~ (22) "Earned release" means earned release from
25 confinement as provided in RCW 9.94A.728.

26 ~~((+24+))~~ (23) "Escape" means:

27 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
28 first degree (RCW 9A.76.110), escape in the second degree (RCW
29 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
30 willful failure to return from work release (RCW 72.65.070), or willful
31 failure to be available for supervision by the department while in
32 community custody (RCW 72.09.310); or

33 (b) Any federal or out-of-state conviction for an offense that
34 under the laws of this state would be a felony classified as an escape
35 under (a) of this subsection.

36 ~~((+25+))~~ (24) "Felony traffic offense" means:

37 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
38 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-

1 run injury-accident (RCW 46.52.020(4)), felony driving while under the
2 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
3 felony physical control of a vehicle while under the influence of
4 intoxicating liquor or any drug (RCW 46.61.504(6)); or

5 (b) Any federal or out-of-state conviction for an offense that
6 under the laws of this state would be a felony classified as a felony
7 traffic offense under (a) of this subsection.

8 ~~((+26+))~~ (25) "Fine" means a specific sum of money ordered by the
9 sentencing court to be paid by the offender to the court over a
10 specific period of time.

11 ~~((+27+))~~ (26) "First-time offender" means any person who has no
12 prior convictions for a felony and is eligible for the first-time
13 offender waiver under RCW 9.94A.650.

14 ~~((+28+))~~ (27) "Home detention" means a program of partial
15 confinement available to offenders wherein the offender is confined in
16 a private residence subject to electronic surveillance.

17 ~~((+29+))~~ (28) "Legal financial obligation" means a sum of money
18 that is ordered by a superior court of the state of Washington for
19 legal financial obligations which may include restitution to the
20 victim, statutorily imposed crime victims' compensation fees as
21 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
22 drug funds, court-appointed attorneys' fees, and costs of defense,
23 fines, and any other financial obligation that is assessed to the
24 offender as a result of a felony conviction. Upon conviction for
25 vehicular assault while under the influence of intoxicating liquor or
26 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
27 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
28 legal financial obligations may also include payment to a public agency
29 of the expense of an emergency response to the incident resulting in
30 the conviction, subject to RCW 38.52.430.

31 ~~((+30+))~~ (29) "Most serious offense" means any of the following
32 felonies or a felony attempt to commit any of the following felonies:

33 (a) Any felony defined under any law as a class A felony or
34 criminal solicitation of or criminal conspiracy to commit a class A
35 felony;

36 (b) Assault in the second degree;

37 (c) Assault of a child in the second degree;

38 (d) Child molestation in the second degree;

- 1 (e) Controlled substance homicide;
- 2 (f) Extortion in the first degree;
- 3 (g) Incest when committed against a child under age fourteen;
- 4 (h) Indecent liberties;
- 5 (i) Kidnapping in the second degree;
- 6 (j) Leading organized crime;
- 7 (k) Manslaughter in the first degree;
- 8 (l) Manslaughter in the second degree;
- 9 (m) Promoting prostitution in the first degree;
- 10 (n) Rape in the third degree;
- 11 (o) Robbery in the second degree;
- 12 (p) Sexual exploitation;
- 13 (q) Vehicular assault, when caused by the operation or driving of
14 a vehicle by a person while under the influence of intoxicating liquor
15 or any drug or by the operation or driving of a vehicle in a reckless
16 manner;
- 17 (r) Vehicular homicide, when proximately caused by the driving of
18 any vehicle by any person while under the influence of intoxicating
19 liquor or any drug as defined by RCW 46.61.502, or by the operation of
20 any vehicle in a reckless manner;
- 21 (s) Any other class B felony offense with a finding of sexual
22 motivation;
- 23 (t) Any other felony with a deadly weapon verdict under RCW
24 9.94A.602;
- 25 (u) Any felony offense in effect at any time prior to December 2,
26 1993, that is comparable to a most serious offense under this
27 subsection, or any federal or out-of-state conviction for an offense
28 that under the laws of this state would be a felony classified as a
29 most serious offense under this subsection;
- 30 (v)(i) A prior conviction for indecent liberties under RCW
31 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
32 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
33 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
34 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 35 (ii) A prior conviction for indecent liberties under RCW
36 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
37 if: (A) The crime was committed against a child under the age of
38 fourteen; or (B) the relationship between the victim and perpetrator is

1 included in the definition of indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
3 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
4 through July 27, 1997;

5 (w) Any out-of-state conviction for a felony offense with a finding
6 of sexual motivation if the minimum sentence imposed was ten years or
7 more; provided that the out-of-state felony offense must be comparable
8 to a felony offense under Title 9 or 9A RCW and the out-of-state
9 definition of sexual motivation must be comparable to the definition of
10 sexual motivation contained in this section.

11 (~~(31)~~) (30) "Nonviolent offense" means an offense which is not a
12 violent offense.

13 (~~(32)~~) (31) "Offender" means a person who has committed a felony
14 established by state law and is eighteen years of age or older or is
15 less than eighteen years of age but whose case is under superior court
16 jurisdiction under RCW 13.04.030 or has been transferred by the
17 appropriate juvenile court to a criminal court pursuant to RCW
18 13.40.110. In addition, for the purpose of community custody
19 requirements under this chapter, "offender" also means a misdemeanor or
20 gross misdemeanor probationer convicted of an offense included in RCW
21 9.94A.501(1) and ordered by a superior court to probation under the
22 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
23 9.95.210. Throughout this chapter, the terms "offender" and
24 "defendant" are used interchangeably.

25 (~~(33)~~) (32) "Partial confinement" means confinement for no more
26 than one year in a facility or institution operated or utilized under
27 contract by the state or any other unit of government, or, if home
28 detention or work crew has been ordered by the court, in an approved
29 residence, for a substantial portion of each day with the balance of
30 the day spent in the community. Partial confinement includes work
31 release, home detention, work crew, and a combination of work crew and
32 home detention.

33 (~~(34)~~) (33) "Pattern of criminal street gang activity" means:

34 (a) The commission, attempt, conspiracy, or solicitation of, or any
35 prior juvenile adjudication of or adult conviction of, two or more of
36 the following criminal street gang-related offenses:

37 (i) Any "serious violent" felony offense as defined in ((RCW

1 ~~9.94A.030~~) this section, excluding Homicide by Abuse (RCW 9A.32.055)
2 and Assault of a Child 1 (RCW 9A.36.120);
3 (ii) Any "violent" offense as defined by (~~RCW 9.94A.030~~) this
4 section, excluding Assault of a Child 2 (RCW 9A.36.130);
5 (iii) Deliver or Possession with Intent to Deliver a Controlled
6 Substance (chapter 69.50 RCW);
7 (iv) Any violation of the firearms and dangerous weapon act
8 (chapter 9.41 RCW);
9 (v) Theft of a Firearm (RCW 9A.56.300);
10 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
11 (vii) Malicious Harassment (RCW 9A.36.080);
12 (viii) Harassment where a subsequent violation or deadly threat is
13 made (RCW 9A.46.020(2)(b));
14 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
15 (x) Any felony conviction by a person eighteen years of age or
16 older with a special finding of involving a juvenile in a felony
17 offense under RCW 9.94A.833;
18 (xi) Residential Burglary (RCW 9A.52.025);
19 (xii) Burglary 2 (RCW 9A.52.030);
20 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
21 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
22 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
23 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
24 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
25 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
26 9A.56.075);
27 (xix) Extortion 1 (RCW 9A.56.120);
28 (xx) Extortion 2 (RCW 9A.56.130);
29 (xxi) Intimidating a Witness (RCW 9A.72.110);
30 (xxii) Tampering with a Witness (RCW 9A.72.120);
31 (xxiii) Reckless Endangerment (RCW 9A.36.050);
32 (xxiv) Coercion (RCW 9A.36.070);
33 (xxv) Harassment (RCW 9A.46.020); or
34 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
35 (b) That at least one of the offenses listed in (a) of this
36 subsection shall have occurred after July 1, 2008;
37 (c) That the most recent committed offense listed in (a) of this

1 subsection occurred within three years of a prior offense listed in (a)
2 of this subsection; and

3 (d) Of the offenses that were committed in (a) of this subsection,
4 the offenses occurred on separate occasions or were committed by two or
5 more persons.

6 (~~(+35+)~~) (34) "Persistent offender" is an offender who:

7 (a)(i) Has been convicted in this state of any felony considered a
8 most serious offense; and

9 (ii) Has, before the commission of the offense under (a) of this
10 subsection, been convicted as an offender on at least two separate
11 occasions, whether in this state or elsewhere, of felonies that under
12 the laws of this state would be considered most serious offenses and
13 would be included in the offender score under RCW 9.94A.525; provided
14 that of the two or more previous convictions, at least one conviction
15 must have occurred before the commission of any of the other most
16 serious offenses for which the offender was previously convicted; or

17 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
18 of a child in the first degree, child molestation in the first degree,
19 rape in the second degree, rape of a child in the second degree, or
20 indecent liberties by forcible compulsion; (B) any of the following
21 offenses with a finding of sexual motivation: Murder in the first
22 degree, murder in the second degree, homicide by abuse, kidnapping in
23 the first degree, kidnapping in the second degree, assault in the first
24 degree, assault in the second degree, assault of a child in the first
25 degree, assault of a child in the second degree, or burglary in the
26 first degree; or (C) an attempt to commit any crime listed in this
27 subsection (~~(+35+)~~) (34)(b)(i); and

28 (ii) Has, before the commission of the offense under (b)(i) of this
29 subsection, been convicted as an offender on at least one occasion,
30 whether in this state or elsewhere, of an offense listed in (b)(i) of
31 this subsection or any federal or out-of-state offense or offense under
32 prior Washington law that is comparable to the offenses listed in
33 (b)(i) of this subsection. A conviction for rape of a child in the
34 first degree constitutes a conviction under (b)(i) of this subsection
35 only when the offender was sixteen years of age or older when the
36 offender committed the offense. A conviction for rape of a child in
37 the second degree constitutes a conviction under (b)(i) of this

1 subsection only when the offender was eighteen years of age or older
2 when the offender committed the offense.

3 ~~((+36+))~~ (35) "Predatory" means: (a) The perpetrator of the crime
4 was a stranger to the victim, as defined in this section; (b) the
5 perpetrator established or promoted a relationship with the victim
6 prior to the offense and the victimization of the victim was a
7 significant reason the perpetrator established or promoted the
8 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
9 volunteer, or other person in authority in any public or private school
10 and the victim was a student of the school under his or her authority
11 or supervision. For purposes of this subsection, "school" does not
12 include home-based instruction as defined in RCW 28A.225.010; (ii) a
13 coach, trainer, volunteer, or other person in authority in any
14 recreational activity and the victim was a participant in the activity
15 under his or her authority or supervision; or (iii) a pastor, elder,
16 volunteer, or other person in authority in any church or religious
17 organization, and the victim was a member or participant of the
18 organization under his or her authority.

19 ~~((+37+))~~ (36) "Private school" means a school regulated under
20 chapter 28A.195 or 28A.205 RCW.

21 ~~((+38+))~~ (37) "Public school" has the same meaning as in RCW
22 28A.150.010.

23 ~~((+39+))~~ (38) "Restitution" means a specific sum of money ordered
24 by the sentencing court to be paid by the offender to the court over a
25 specified period of time as payment of damages. The sum may include
26 both public and private costs.

27 ~~((+40+))~~ (39) "Risk assessment" means the application of ~~((an~~
28 ~~objective))~~ the risk instrument ~~((supported by research and adopted~~
29 ~~by))~~ recommended to the department ~~((for the purpose of assessing an~~
30 ~~offender's risk of reoffense, taking into consideration the nature of~~
31 ~~the harm done by the offender, place and circumstances of the offender~~
32 ~~related to risk, the offender's relationship to any victim, and any~~
33 ~~information provided to the department by victims. The results of a~~
34 ~~risk assessment shall not be based on unconfirmed or unconfirmable~~
35 ~~allegations))~~ by the Washington state institute for public policy as
36 having the highest degree of predictive accuracy for assessing an
37 offender's risk of reoffense.

38 ~~((+41+))~~ (40) "Serious traffic offense" means:

1 (a) Nonfelony driving while under the influence of intoxicating
2 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
3 while under the influence of intoxicating liquor or any drug (RCW
4 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
5 attended vehicle (RCW 46.52.020(5)); or

6 (b) Any federal, out-of-state, county, or municipal conviction for
7 an offense that under the laws of this state would be classified as a
8 serious traffic offense under (a) of this subsection.

9 (~~(42)~~) (41) "Serious violent offense" is a subcategory of violent
10 offense and means:

11 (a)(i) Murder in the first degree;

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

18 (viii) Assault of a child in the first degree; or

19 (ix) An attempt, criminal solicitation, or criminal conspiracy to
20 commit one of these felonies; or

21 (b) Any federal or out-of-state conviction for an offense that
22 under the laws of this state would be a felony classified as a serious
23 violent offense under (a) of this subsection.

24 (~~(43)~~) (42) "Sex offense" means:

25 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
26 RCW 9A.44.130(12);

27 (ii) A violation of RCW 9A.64.020;

28 (iii) A felony that is a violation of chapter 9.68A RCW other than
29 RCW 9.68A.080; or

30 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
31 criminal solicitation, or criminal conspiracy to commit such crimes;

32 (b) Any conviction for a felony offense in effect at any time prior
33 to July 1, 1976, that is comparable to a felony classified as a sex
34 offense in (a) of this subsection;

35 (c) A felony with a finding of sexual motivation under RCW
36 9.94A.835 or 13.40.135; or

37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex
2 offense under (a) of this subsection.

3 ~~((44))~~ (43) "Sexual motivation" means that one of the purposes
4 for which the defendant committed the crime was for the purpose of his
5 or her sexual gratification.

6 ~~((45))~~ (44) "Standard sentence range" means the sentencing
7 court's discretionary range in imposing a nonappealable sentence.

8 ~~((46))~~ (45) "Statutory maximum sentence" means the maximum length
9 of time for which an offender may be confined as punishment for a crime
10 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
11 the crime, or other statute defining the maximum penalty for a crime.

12 ~~((47))~~ (46) "Stranger" means that the victim did not know the
13 offender twenty-four hours before the offense.

14 ~~((48))~~ (47) "Total confinement" means confinement inside the
15 physical boundaries of a facility or institution operated or utilized
16 under contract by the state or any other unit of government for twenty-
17 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

18 ~~((49))~~ (48) "Transition training" means written and verbal
19 instructions and assistance provided by the department to the offender
20 during the two weeks prior to the offender's successful completion of
21 the work ethic camp program. The transition training shall include
22 instructions in the offender's requirements and obligations during the
23 offender's period of community custody.

24 ~~((50))~~ (49) "Victim" means any person who has sustained
25 emotional, psychological, physical, or financial injury to person or
26 property as a direct result of the crime charged.

27 ~~((51))~~ (50) "Violent offense" means:

28 (a) Any of the following felonies:

29 (i) Any felony defined under any law as a class A felony or an
30 attempt to commit a class A felony;

31 (ii) Criminal solicitation of or criminal conspiracy to commit a
32 class A felony;

33 (iii) Manslaughter in the first degree;

34 (iv) Manslaughter in the second degree;

35 (v) Indecent liberties if committed by forcible compulsion;

36 (vi) Kidnapping in the second degree;

37 (vii) Arson in the second degree;

38 (viii) Assault in the second degree;

1 (ix) Assault of a child in the second degree;
2 (x) Extortion in the first degree;
3 (xi) Robbery in the second degree;
4 (xii) Drive-by shooting;
5 (xiii) Vehicular assault, when caused by the operation or driving
6 of a vehicle by a person while under the influence of intoxicating
7 liquor or any drug or by the operation or driving of a vehicle in a
8 reckless manner; and

9 (xiv) Vehicular homicide, when proximately caused by the driving of
10 any vehicle by any person while under the influence of intoxicating
11 liquor or any drug as defined by RCW 46.61.502, or by the operation of
12 any vehicle in a reckless manner;

13 (b) Any conviction for a felony offense in effect at any time prior
14 to July 1, 1976, that is comparable to a felony classified as a violent
15 offense in (a) of this subsection; and

16 (c) Any federal or out-of-state conviction for an offense that
17 under the laws of this state would be a felony classified as a violent
18 offense under (a) or (b) of this subsection.

19 ~~((+52+))~~ (51) "Work crew" means a program of partial confinement
20 consisting of civic improvement tasks for the benefit of the community
21 that complies with RCW 9.94A.725.

22 ~~((+53+))~~ (52) "Work ethic camp" means an alternative incarceration
23 program as provided in RCW 9.94A.690 designed to reduce recidivism and
24 lower the cost of corrections by requiring offenders to complete a
25 comprehensive array of real-world job and vocational experiences,
26 character-building work ethics training, life management skills
27 development, substance abuse rehabilitation, counseling, literacy
28 training, and basic adult education.

29 ~~((+54+))~~ (53) "Work release" means a program of partial confinement
30 available to offenders who are employed or engaged as a student in a
31 regular course of study at school.

32 **Sec. 5.** RCW 9.94A.701 and 2009 c 28 s 10 are each amended to read
33 as follows:

34 (1) If an offender is sentenced to the custody of the department
35 for one of the following crimes, the court shall ~~((impose a term of~~
36 ~~community custody for the community custody range established under RCW~~
37 ~~9.94A.850 or up to the period of earned release awarded pursuant to RCW~~

1 ~~9.94A.728 (1) and (2), whichever is longer)), in addition to the other~~
2 ~~terms of the sentence, sentence the offender to community custody for~~
3 ~~three years:~~

4 (a) A sex offense not sentenced under RCW 9.94A.507;

5 (b) A serious violent offense; or

6 (c) ~~((A crime against persons under RCW 9.94A.411(2);~~

7 ~~(d) An offense involving the unlawful possession of a firearm under~~
8 ~~RCW 9.41.040, where the offender is a criminal street gang member or~~
9 ~~associate;~~

10 ~~(e) A felony offender under chapter 69.50 or 69.52 RCW))~~ A
11 violation of RCW 9A.44.130(11)(a) committed on or after June 7, 2006,
12 when a court sentences the person to a term of confinement of one year
13 or less.

14 ~~(2) ((If an offender is sentenced to a term of confinement of one~~
15 ~~year or less for a violation of RCW 9A.44.130(11)(a), the court shall~~
16 ~~impose a term of community custody for the community custody range~~
17 ~~established under RCW 9.94A.850 or up to the period of earned release~~
18 ~~awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer))~~ A
19 court shall, in addition to the other terms of the sentence, sentence
20 an offender to community custody for eighteen months when the court
21 sentences the person to the custody of the department for a violent
22 offense that is not considered a serious violent offense.

23 (3) A court shall, in addition to the other terms of the sentence,
24 sentence an offender to community custody for one year when the court
25 sentences the person to the custody of the department for:

26 (a) Any crime against persons under RCW 9.94A.411(2);

27 (b) An offense involving the unlawful possession of a firearm under
28 RCW 9.41.040, where the offender is a criminal street gang member or
29 associate; or

30 (c) A felony offense under chapter 69.50 or 69.52 RCW, committed on
31 or after July 1, 2000.

32 ~~((+3))~~ (4) If an offender is sentenced under the drug offender
33 sentencing alternative, the court shall impose community custody as
34 provided in RCW 9.94A.660.

35 ~~((+4))~~ (5) If an offender is sentenced under the special sexual
36 offender sentencing alternative, the court shall impose community
37 custody as provided in RCW 9.94A.670.

1 ~~((5))~~ (6) If an offender is sentenced to a work ethic camp, the
2 court shall impose community custody as provided in RCW 9.94A.690.

3 ~~((6))~~ (7) If a sex offender is sentenced as a nonpersistent
4 offender pursuant to RCW 9.94A.507, the court shall impose community
5 custody as provided in that section.

6 ~~((7) If the offender is a criminal street gang associate or member
7 and is found guilty of unlawful possession of a firearm under RCW
8 9.41.040, the court shall impose a term of community custody under
9 subsection (1)(d) of this section))~~ (8) The term of community custody
10 specified by this section shall be reduced by the court whenever an
11 offender's standard range term of confinement in combination with the
12 term of community custody exceeds the statutory maximum for the crime
13 as provided in RCW 9A.20.021.

14 **Sec. 6.** RCW 9.94A.704 and 2009 c 28 s 12 are each amended to read
15 as follows:

16 (1) Every person who is sentenced to a period of community custody
17 shall report to and be placed under the supervision of the department,
18 subject to RCW 9.94A.501.

19 (2)(a) The department shall assess the offender's risk of reoffense
20 and may establish and modify additional conditions of community custody
21 based upon the risk to community safety.

22 (b) Within the funds available for community custody, the
23 department shall determine conditions ~~((and duration of community
24 custody))~~ on the basis of risk to community safety, and shall supervise
25 offenders during community custody on the basis of risk to community
26 safety and conditions imposed by the court. The secretary shall adopt
27 rules to implement the provisions of this subsection (2)(b).

28 (3) If the offender is supervised by the department, the department
29 shall at a minimum instruct the offender to:

30 (a) Report as directed to a community corrections officer;

31 (b) Remain within prescribed geographical boundaries;

32 (c) Notify the community corrections officer of any change in the
33 offender's address or employment;

34 (d) Pay the supervision fee assessment; and

35 (e) Disclose the fact of supervision to any mental health or
36 chemical dependency treatment provider, as required by RCW 9.94A.722.

1 (4) The department may require the offender to participate in
2 rehabilitative programs, or otherwise perform affirmative conduct, and
3 to obey all laws.

4 (5) If the offender was sentenced pursuant to a conviction for a
5 sex offense, the department may impose electronic monitoring. Within
6 the resources made available by the department for this purpose, the
7 department shall carry out any electronic monitoring using the most
8 appropriate technology given the individual circumstances of the
9 offender. As used in this section, "electronic monitoring" means the
10 monitoring of an offender using an electronic offender tracking system
11 including, but not limited to, a system using radio frequency or active
12 or passive global positioning system technology.

13 (6) The department may not impose conditions that are contrary to
14 those ordered by the court and may not contravene or decrease court-
15 imposed conditions.

16 (7)(a) The department shall notify the offender in writing of any
17 additional conditions or modifications.

18 (b) By the close of the next business day after receiving notice of
19 a condition imposed or modified by the department, an offender may
20 request an administrative review under rules adopted by the department.
21 The condition shall remain in effect unless the reviewing officer finds
22 that it is not reasonably related to the crime of conviction, the
23 offender's risk of reoffending, or the safety of the community.

24 (8) The department may require offenders to pay for special
25 services rendered including electronic monitoring, day reporting, and
26 telephone reporting, dependent on the offender's ability to pay. The
27 department may pay for these services for offenders who are not able to
28 pay.

29 (9)(a) When a sex offender has been sentenced pursuant to RCW
30 9.94A.507, the department shall assess the offender's risk of
31 recidivism and shall recommend to the board any additional or modified
32 conditions based upon the offender's risk to community safety and may
33 recommend affirmative conduct or electronic monitoring consistent with
34 subsections (4) through (6) of this section.

35 (b) The board may impose conditions in addition to court-ordered
36 conditions. The board must consider and may impose department-
37 recommended conditions.

1 (c) By the close of the next business day, after receiving notice
2 of a condition imposed by the board or the department, an offender may
3 request an administrative hearing under rules adopted by the board.
4 The condition shall remain in effect unless the hearing examiner finds
5 that it is not reasonably related to any of the following:

- 6 (i) The crime of conviction;
- 7 (ii) The offender's risk of reoffending;
- 8 (iii) The safety of the community.

9 (d) If the department finds that an emergency exists requiring the
10 immediate imposition of additional conditions in order to prevent the
11 offender from committing a crime, the department may impose such
12 conditions. The department may not impose conditions that are contrary
13 to those set by the board or the court and may not contravene or
14 decrease court-imposed or board-imposed conditions. Conditions imposed
15 under this subsection shall take effect immediately after notice to the
16 offender by personal service, but shall not remain in effect longer
17 than seven working days unless approved by the board.

18 (10) In setting, modifying, and enforcing conditions of community
19 custody, the department shall be deemed to be performing a
20 quasi-judicial function.

21 **Sec. 7.** RCW 9.94A.707 and 2008 c 231 s 12 are each amended to read
22 as follows:

23 (1) Community custody shall begin: (a) Upon completion of the term
24 of confinement; or (b) ((~~at such time as the offender is transferred to~~
25 ~~community custody in lieu of earned release in accordance with RCW~~
26 ~~9.94A.728 (1) or (2); or (c))~~) at the time of sentencing if no term of
27 confinement is ordered.

28 (2) When an offender is sentenced to community custody, the
29 offender is subject to the conditions of community custody as of the
30 date of sentencing, unless otherwise ordered by the court.

31 ~~((3) When an offender is sentenced to a community custody range~~
32 ~~pursuant to RCW 9.94A.701 (1) or (2), the department shall discharge~~
33 ~~the offender from community custody on a date determined by the~~
34 ~~department, which the department may modify, based on risk and~~
35 ~~performance of the offender, within the range or at the end of the~~
36 ~~period of earned release, whichever is later.))~~

1 **Sec. 8.** RCW 9.94A.850 and 2009 c 28 s 17 are each amended to read
2 as follows:

3 (1) A sentencing guidelines commission is established as an agency
4 of state government.

5 (2) The legislature finds that the commission, having accomplished
6 its original statutory directive to implement this chapter, and having
7 expertise in sentencing practice and policies, shall:

8 (a) Evaluate state sentencing policy, to include whether the
9 sentencing ranges and standards are consistent with and further:

10 (i) The purposes of this chapter as defined in RCW 9.94A.010; and

11 (ii) The intent of the legislature to emphasize confinement for the
12 violent offender and alternatives to confinement for the nonviolent
13 offender.

14 The commission shall provide the governor and the legislature with
15 its evaluation and recommendations under this subsection not later than
16 December 1, 1996, and every two years thereafter;

17 (b) Recommend to the legislature revisions or modifications to the
18 standard sentence ranges, state sentencing policy, prosecuting
19 standards, and other standards. If implementation of the revisions or
20 modifications would result in exceeding the capacity of correctional
21 facilities, then the commission shall accompany its recommendation with
22 an additional list of standard sentence ranges which are consistent
23 with correction capacity;

24 (c) Study the existing criminal code and from time to time make
25 recommendations to the legislature for modification;

26 (d)(i) Serve as a clearinghouse and information center for the
27 collection, preparation, analysis, and dissemination of information on
28 state and local adult and juvenile sentencing practices; (ii) develop
29 and maintain a computerized adult and juvenile sentencing information
30 system by individual superior court judge consisting of offender,
31 offense, history, and sentence information entered from judgment and
32 sentence forms for all adult felons; and (iii) conduct ongoing research
33 regarding adult and juvenile sentencing guidelines, use of total
34 confinement and alternatives to total confinement, plea bargaining, and
35 other matters relating to the improvement of the adult criminal justice
36 system and the juvenile justice system;

37 (e) Assume the powers and duties of the juvenile disposition
38 standards commission after June 30, 1996;

1 (f) Evaluate the effectiveness of existing disposition standards
2 and related statutes in implementing policies set forth in RCW
3 13.40.010 generally, specifically review the guidelines relating to the
4 confinement of minor and first-time offenders as well as the use of
5 diversion, and review the application of current and proposed juvenile
6 sentencing standards and guidelines for potential adverse impacts on
7 the sentencing outcomes of racial and ethnic minority youth;

8 (g) Solicit the comments and suggestions of the juvenile justice
9 community concerning disposition standards, and make recommendations to
10 the legislature regarding revisions or modifications of the standards.
11 The evaluations shall be submitted to the legislature on December 1 of
12 each odd-numbered year. The department of social and health services
13 shall provide the commission with available data concerning the
14 implementation of the disposition standards and related statutes and
15 their effect on the performance of the department's responsibilities
16 relating to juvenile offenders, and with recommendations for
17 modification of the disposition standards. The administrative office
18 of the courts shall provide the commission with available data on
19 diversion, including the use of youth court programs, and dispositions
20 of juvenile offenders under chapter 13.40 RCW; and

21 (h) Not later than December 1, 1997, and at least every two years
22 thereafter, based on available information, report to the governor and
23 the legislature on:

24 (i) Racial disproportionality in juvenile and adult sentencing,
25 and, if available, the impact that diversions, such as youth courts,
26 have on racial disproportionality in juvenile prosecution,
27 adjudication, and sentencing;

28 (ii) The capacity of state and local juvenile and adult facilities
29 and resources; and

30 (iii) Recidivism information on adult and juvenile offenders.

31 (3) Each of the commission's recommended standard sentence ranges
32 shall include one or more of the following: Total confinement, partial
33 confinement, community supervision, community restitution, and a fine.

34 (4) The standard sentence ranges of total and partial confinement
35 under this chapter, except as provided in RCW 9.94A.517, are subject to
36 the following limitations:

37 (a) If the maximum term in the range is one year or less, the
38 minimum term in the range shall be no less than one-third of the

1 maximum term in the range, except that if the maximum term in the range
2 is ninety days or less, the minimum term may be less than one-third of
3 the maximum;

4 (b) If the maximum term in the range is greater than one year, the
5 minimum term in the range shall be no less than seventy-five percent of
6 the maximum term in the range, except that for murder in the second
7 degree in seriousness level XIV under RCW 9.94A.510, the minimum term
8 in the range shall be no less than fifty percent of the maximum term in
9 the range; and

10 (c) The maximum term of confinement in a range may not exceed the
11 statutory maximum for the crime as provided in RCW 9A.20.021.

12 ~~(5)((a) Not later than December 31 of each year, the commission
13 may propose modifications to the community custody ranges to be
14 included in sentences under RCW 9.94A.701. The ranges shall be based
15 on the principles in RCW 9.94A.010, and shall take into account the
16 funds available to the department for community custody. The minimum
17 term in each range shall not be less than one half of the maximum term.~~

18 ~~(b) The legislature may, by enactment of a legislative bill, adopt
19 or modify the community custody ranges proposed by the commission. If
20 the legislature fails to adopt or modify the initial ranges in its next
21 regular session after they are proposed, the proposed ranges shall take
22 effect without legislative approval for crimes committed on or after
23 July 1, 2000.~~

24 ~~(c) When the commission proposes modifications to ranges pursuant
25 to this subsection, the legislature may, by enactment of a bill, adopt
26 or modify the ranges proposed by the commission for crimes committed on
27 or after July 1 of the year after they were proposed. Unless the
28 legislature adopts or modifies the commission's proposal in its next
29 regular session, the proposed ranges shall not take effect.~~

30 ~~(6))~~ The commission shall exercise its duties under this section
31 in conformity with chapter 34.05 RCW.

32 NEW SECTION. **Sec. 9.** The department of corrections shall
33 recalculate the term of community custody and reset the date that
34 community custody will end for each offender currently in confinement
35 or serving a term of community custody for a crime specified in RCW
36 9.94A.701. The recalculation shall not extend a term of community
37 custody beyond that to which an offender is currently subject.

1 **Sec. 10.** 2008 c 231 s 6 (uncodified) is amended to read as
2 follows:

3 The existing sentencing reform act contains numerous provisions for
4 supervision of different types of offenders. This duplication has
5 caused great confusion for judges, lawyers, offenders, and the
6 department of corrections, and often results in inaccurate sentences.
7 The clarifications in this act are intended to support continued
8 discussions by the sentencing guidelines commission with the courts and
9 the criminal justice community to identify and propose policy changes
10 that will further simplify and improve the sentencing reform act
11 relating to the supervision of offenders. The sentencing guidelines
12 commission shall submit policy change proposals to the legislature on
13 or before December 1, 2008.

14 Sections 7 through 58 of this act are intended to simplify the
15 supervision provisions of the sentencing reform act and increase the
16 uniformity of its application. These sections are not intended to
17 either increase or decrease the authority of sentencing courts or the
18 department relating to supervision, except for those provisions
19 instructing the court to apply the provisions of the current community
20 custody law to offenders sentenced after July 1, 2009, but who
21 committed their crime prior to August 1, 2009, to the extent that such
22 application is constitutionally permissible.

23 This will effect a change for offenders who committed their crimes
24 prior to the offender accountability act, chapter 196, Laws of 1999.
25 These offenders will be ordered to a term of community custody rather
26 than community placement or community supervision. To the extent
27 constitutionally permissible, the terms of the offender's supervision
28 will be as provided in current law. With the exception of this change,
29 the legislature does not intend to make, and no provision of sections
30 7 through 58 of this act may be construed as making, a substantive
31 change to the supervision provisions of the sentencing reform act.

32 (~~It is the intent of the legislature to reaffirm that section 3,~~
33 ~~chapter 379, Laws of 2003, expires July 1, 2010.~~)

34 **Sec. 11.** RCW 9.95.220 and 1957 c 227 s 5 are each amended to read
35 as follows:

36 (1) Except as provided in subsection (2) of this section, whenever
37 the state parole officer or other officer under whose supervision the

1 probationer has been placed shall have reason to believe such
2 probationer is violating the terms of his or her probation, or engaging
3 in criminal practices, or is abandoned to improper associates, or
4 living a vicious life, he or she shall cause the probationer to be
5 brought before the court wherein the probation was granted. For this
6 purpose any peace officer or state parole officer may rearrest any such
7 person without warrant or other process. The court may thereupon in
8 its discretion without notice revoke and terminate such probation. In
9 the event the judgment has been pronounced by the court and the
10 execution thereof suspended, the court may revoke such suspension,
11 whereupon the judgment shall be in full force and effect, and the
12 defendant shall be delivered to the sheriff to be transported to the
13 penitentiary or reformatory as the case may be. If the judgment has
14 not been pronounced, the court shall pronounce judgment after such
15 revocation of probation and the defendant shall be delivered to the
16 sheriff to be transported to the penitentiary or reformatory, in
17 accordance with the sentence imposed.

18 (2) If a probationer is being supervised by the department of
19 corrections pursuant to RCW 9.95.204, the department shall have
20 authority to issue a warrant for the arrest of an offender who violates
21 a condition of community custody, as provided in RCW 9.94A.716. Any
22 sanctions shall be imposed by the department pursuant to RCW 9.94A.737.
23 The department shall provide a copy of the violation hearing report to
24 the sentencing court in a timely manner. Nothing in this subsection is
25 intended to limit the power of the sentencing court to respond to a
26 probationer's violation of conditions.

27 **Sec. 12.** RCW 9.94A.633 and 2009 c 28 s 7 are each amended to read
28 as follows:

29 (1)(a) An offender who violates any condition or requirement of a
30 sentence may be sanctioned with up to sixty days' confinement for each
31 violation.

32 (b) In lieu of confinement, an offender may be sanctioned with work
33 release, home detention with electronic monitoring, work crew,
34 community restitution, inpatient treatment, daily reporting, curfew,
35 educational or counseling sessions, supervision enhanced through
36 electronic monitoring, or any other sanctions available in the
37 community.

1 (2) If an offender was under community custody pursuant to one of
2 the following statutes, the offender may be sanctioned as follows:

3 (a) If the offender was transferred to community custody in lieu of
4 earned early release in accordance with RCW 9.94A.728(2), the offender
5 may be transferred to a more restrictive confinement status to serve up
6 to the remaining portion of the sentence, less credit for any period
7 actually spent in community custody or in detention awaiting
8 disposition of an alleged violation.

9 (b) If the offender was sentenced under the drug offender
10 sentencing alternative set out in RCW 9.94A.660, the offender may be
11 sanctioned in accordance with that section.

12 (c) If the offender was sentenced under the special sexual offender
13 sentencing alternative set out in RCW 9.94A.670, the suspended sentence
14 may be revoked and the offender committed to serve the original
15 sentence of confinement.

16 (d) If the offender was sentenced to a work ethic camp pursuant to
17 RCW 9.94A.690, the offender may be reclassified to serve the unexpired
18 term of his or her sentence in total confinement.

19 (e) If a sex offender was sentenced pursuant to RCW 9.94A.507, the
20 offender may be transferred to a more restrictive confinement status to
21 serve up to the remaining portion of the sentence, less credit for any
22 period actually spent in community custody or in detention awaiting
23 disposition of an alleged violation.

24 (3) If a probationer is being supervised by the department pursuant
25 to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be
26 sanctioned pursuant to subsection (1) of this section. The department
27 shall have authority to issue a warrant for the arrest of an offender
28 who violates a condition of community custody, as provided in RCW
29 9.94A.716. Any sanctions shall be imposed by the department pursuant
30 to RCW 9.94A.737. The department shall provide a copy of the violation
31 hearing report to the sentencing court in a timely manner. Nothing in
32 this subsection is intended to limit the power of the sentencing court
33 to respond to a probationer's violation of conditions.

34 **Sec. 13.** RCW 9.94A.737 and 2007 c 483 s 305 are each amended to
35 read as follows:

36 (1) If an offender violates any condition or requirement of
37 community custody, the department may transfer the offender to a more

1 restrictive confinement status to serve up to the remaining portion of
2 the sentence, less credit for any period actually spent in community
3 custody or in detention awaiting disposition of an alleged violation
4 and subject to the limitations of subsection (3) of this section.

5 (2) If an offender has not completed his or her maximum term of
6 total confinement and is subject to a third violation hearing for any
7 violation of community custody and is found to have committed the
8 violation, the department shall return the offender to total
9 confinement in a state correctional facility to serve up to the
10 remaining portion of his or her sentence, unless it is determined that
11 returning the offender to a state correctional facility would
12 substantially interfere with the offender's ability to maintain
13 necessary community supports or to participate in necessary treatment
14 or programming and would substantially increase the offender's
15 likelihood of reoffending.

16 (3)(a) For a sex offender sentenced to a term of community custody
17 under RCW 9.94A.670 who violates any condition of community custody,
18 the department may impose a sanction of up to sixty days' confinement
19 in a local correctional facility for each violation. If the department
20 imposes a sanction, the department shall submit within seventy-two
21 hours a report to the court and the prosecuting attorney outlining the
22 violation or violations and the sanctions imposed.

23 (b) For a sex offender sentenced to a term of community custody
24 under RCW 9.94A.710 who violates any condition of community custody
25 after having completed his or her maximum term of total confinement,
26 including time served on community custody in lieu of earned release,
27 the department may impose a sanction of up to sixty days in a local
28 correctional facility for each violation.

29 (c) For an offender sentenced to a term of community custody under
30 RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,
31 for a crime committed on or after July 1, 2000, who violates any
32 condition of community custody after having completed his or her
33 maximum term of total confinement, including time served on community
34 custody in lieu of earned release, the department may impose a sanction
35 of up to sixty days in total confinement for each violation. The
36 department may impose sanctions such as work release, home detention
37 with electronic monitoring, work crew, community restitution, inpatient

1 treatment, daily reporting, curfew, educational or counseling sessions,
2 supervision enhanced through electronic monitoring, or any other
3 sanctions available in the community.

4 (d) For an offender sentenced to a term of community placement
5 under RCW 9.94A.705 who violates any condition of community placement
6 after having completed his or her maximum term of total confinement,
7 including time served on community custody in lieu of earned release,
8 the department may impose a sanction of up to sixty days in total
9 confinement for each violation. The department may impose sanctions
10 such as work release, home detention with electronic monitoring, work
11 crew, community restitution, inpatient treatment, daily reporting,
12 curfew, educational or counseling sessions, supervision enhanced
13 through electronic monitoring, or any other sanctions available in the
14 community.

15 (e) If a probationer is being supervised by the department pursuant
16 to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be
17 sanctioned by the department pursuant to (c) of this subsection. The
18 department shall have authority to issue a warrant for the arrest of an
19 offender who violates a condition of community custody, as provided in
20 RCW 9.94A.740. The department shall provide a copy of the violation
21 hearing report to the sentencing court in a timely manner. Nothing in
22 this subsection is intended to limit the power of the sentencing court
23 to respond to a probationer's violation of conditions.

24 (4) If an offender has been arrested for a new felony offense while
25 under community supervision, community custody, or community placement,
26 the department shall hold the offender in total confinement until a
27 hearing before the department as provided in this section or until the
28 offender has been formally charged for the new felony offense,
29 whichever is earlier. Nothing in this subsection shall be construed as
30 to permit the department to hold an offender past his or her maximum
31 term of total confinement if the offender has not completed the maximum
32 term of total confinement or to permit the department to hold an
33 offender past the offender's term of community supervision, community
34 custody, or community placement.

35 (5) The department shall be financially responsible for any portion
36 of the sanctions authorized by this section that are served in a local
37 correctional facility as the result of action by the department.

1 (6) If an offender is accused of violating any condition or
2 requirement of community custody, he or she is entitled to a hearing
3 before the department prior to the imposition of sanctions. The
4 hearing shall be considered as offender disciplinary proceedings and
5 shall not be subject to chapter 34.05 RCW. The department shall
6 develop hearing procedures and a structure of graduated sanctions.

7 (7) The hearing procedures required under subsection (6) of this
8 section shall be developed by rule and include the following:

9 (a) Hearing officers shall report through a chain of command
10 separate from that of community corrections officers;

11 (b) The department shall provide the offender with written notice
12 of the violation, the evidence relied upon, and the reasons the
13 particular sanction was imposed. The notice shall include a statement
14 of the rights specified in this subsection, and the offender's right to
15 file a personal restraint petition under court rules after the final
16 decision of the department;

17 (c) The hearing shall be held unless waived by the offender, and
18 shall be electronically recorded. For offenders not in total
19 confinement, the hearing shall be held within fifteen working days, but
20 not less than twenty-four hours, after notice of the violation. For
21 offenders in total confinement, the hearing shall be held within five
22 working days, but not less than twenty-four hours, after notice of the
23 violation;

24 (d) The offender shall have the right to: (i) Be present at the
25 hearing; (ii) have the assistance of a person qualified to assist the
26 offender in the hearing, appointed by the hearing officer if the
27 offender has a language or communications barrier; (iii) testify or
28 remain silent; (iv) call witnesses and present documentary evidence;
29 and (v) question witnesses who appear and testify; and

30 (e) The sanction shall take effect if affirmed by the hearing
31 officer. Within seven days after the hearing officer's decision, the
32 offender may appeal the decision to a panel of three reviewing officers
33 designated by the secretary or by the secretary's designee. The
34 sanction shall be reversed or modified if a majority of the panel finds
35 that the sanction was not reasonably related to any of the following:
36 (i) The crime of conviction; (ii) the violation committed; (iii) the
37 offender's risk of reoffending; or (iv) the safety of the community.

1 (8) For purposes of this section, no finding of a violation of
2 conditions may be based on unconfirmed or unconfirmable allegations.

3 (9) The department shall work with the Washington association of
4 sheriffs and police chiefs to establish and operate an electronic
5 monitoring program for low-risk offenders who violate the terms of
6 their community custody. Between January 1, 2006, and December 31,
7 2006, the department shall endeavor to place at least one hundred low-
8 risk community custody violators on the electronic monitoring program
9 per day if there are at least that many low-risk offenders who qualify
10 for the electronic monitoring program.

11 (10) Local governments, their subdivisions and employees, the
12 department and its employees, and the Washington association of
13 sheriffs and police chiefs and its employees shall be immune from civil
14 liability for damages arising from incidents involving low-risk
15 offenders who are placed on electronic monitoring unless it is shown
16 that an employee acted with gross negligence or bad faith.

17 **Sec. 14.** RCW 9.94A.6332 and 2009 c 28 s 8 are each amended to read
18 as follows:

19 The procedure for imposing sanctions for violations of sentence
20 conditions or requirements is as follows:

21 (1) If the offender was sentenced under the drug offender
22 sentencing alternative, any sanctions shall be imposed by the
23 department or the court pursuant to RCW 9.94A.660.

24 (2) If the offender was sentenced under the special sexual offender
25 sentencing alternative, any sanctions shall be imposed by the
26 department or the court pursuant to RCW 9.94A.670.

27 (3) If a sex offender was sentenced pursuant to RCW 9.94A.507, any
28 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

29 (4) In any other case, if the offender is being supervised by the
30 department, any sanctions shall be imposed by the department pursuant
31 to RCW 9.94A.737. If a probationer is being supervised by the
32 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon
33 receipt of a violation hearing report from the department, the court
34 retains any authority that those statutes provide to respond to a
35 probationer's violation of conditions.

36 (5) If the offender is not being supervised by the department, any
37 sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

1 NEW SECTION. **Sec. 15.** The legislature directs the sentencing
2 guidelines commission to include in its biennial report to the
3 legislature, as required by RCW 9.94A.850(2)(h)(iii), and due no later
4 than December 1, 2011, an analysis of the impact on recidivism of the
5 following:

6 (1) The supervision of offenders pursuant to sections 1 and 2 of
7 this act;

8 (2) The department's authority to issue warrants for offenders
9 under its supervision who are sentenced for misdemeanor and gross
10 misdemeanor offenses in superior court; and

11 (3) The community custody terms of supervision pursuant to section
12 5 of this act.

13 NEW SECTION. **Sec. 16.** The following acts or parts of acts are
14 each repealed:

15 (1) RCW 9.95.206 (Misdemeanant probation services--Offender
16 classification system--Supervision standards) and 1996 c 298 s 2; and

17 (2) RCW 9.95.212 (Standards for supervision of misdemeanant
18 probationers) and 1998 c 245 s 2 & 1995 1st sp.s. c 19 s 31.

19 NEW SECTION. **Sec. 17.** 2008 c 231 s 60 (uncodified) is repealed.

20 ****NEW SECTION. Sec. 18. (1) Sections 1, 3, 11, 13, 16, 17, and 20***
21 ***of this act are necessary for the immediate preservation of the public***
22 ***peace, health, or safety, or support of the state government and its***
23 ***existing public institutions, and take effect immediately.***

24 ***(2) Sections 2, 4 through 10, 12, and 14 of this act take effect***
25 ***August 1, 2009.***

****Sec. 18 was vetoed. See message at end of chapter.***

26 NEW SECTION. **Sec. 19.** Sections 1, 3, and 13 of this act expire
27 August 1, 2009.

28 NEW SECTION. **Sec. 20.** This act applies retroactively and
29 prospectively regardless of whether the offender is currently on
30 community custody or probation with the department, currently
31 incarcerated with a term of community custody or probation with the

1 department, or sentenced after the effective date of this section.

Passed by the Senate April 25, 2009.

Passed by the House April 21, 2009.

Approved by the Governor May 6, 2009, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 8, 2009.

Note: Governor's explanation of partial veto is as follows:

"I have approved, except for Section 18, Engrossed Substitute Senate Bill 5288 entitled:

"AN ACT Relating to the supervision of offenders."

I am vetoing the emergency clause in Section 18. I have spoken with the Department of Corrections, and have been informed that they need time to implement the changes of the bill. They have begun preparing and will be ready to implement the changes August 1, 2009, but are not able to make these changes immediately. The elimination of the emergency clause will not affect the fiscal assumptions of the bill.

For this reason, I have vetoed Section 18 of Engrossed Substitute Senate Bill 5288. With the exception of Section 18, Engrossed Substitute Senate Bill 5288 is approved."